2003 Legislative Action on Major Issues

Idaho legislators dealt with questions vital to every Idaho citizen during the 2003 legislative session: How will the state generate enough revenue to maintain essential services in a slow economy? Should Idaho's death penalty statute be revised to require juries instead of judges to determine whether the death penalty should be imposed in first-degree murder cases? Can state dollars be stretched far enough to increase health care for children from working-poor families? The following summary includes legislation passed this session by the Idaho Legislature on major issues:

Agriculture/Natural Resources

- Authorized the Idaho Fish and Game Commission to enter into reciprocal licensure agreements with federally recognized Indian tribes possessing a reservation within the state of Idaho, which will allow persons holding either a state license or a tribal license to hunt, fish or trap wildlife on both state and tribal designated land. (SB 1059)
- Clarified conduct that constitutes an illegal diversion or use of water, authorized the director
 of the Department of Water Resources to issue cease and desist orders and revised civil
 penalty provisions for specified illegal diversion or use of water. (SB 1099)
- Supported and encouraged water conservation practices by providing that defined activity constituting water conservation will not subject water rights to forfeiture. (SB 1100)
- Shifted the responsibility and funding for protection of native wild plants and the authority for plant life biological and species management issues from the Department of Parks and Recreation to the Department of Fish and Game, which currently operates the Conservation Data Center where inventories of these plants are maintained. (HB 67)
- Limited the time of exposure of the Commodity Indemnity Fund when producers deposit grain in warehouses under price-later contracts. In the event a warehouse becomes insolvent, such claims now must be filed within 180 days from the date the contract was executed in order to be eligible for payment from the fund. (HB 102)
- Authorized the Department of Agriculture and the administrator of the Division of Animal Industries to regulate or prohibit the importation or possession of deleterious exotic animals in Idaho, and to designate as deleterious exotic animals those animals determined to be dangerous to the environment, livestock, agriculture or wildlife of the state, and provided civil and criminal penalties for violators. (HB 106)
- Created a Lake Pend Oreille, Pend Oreille River, Priest Lake and Priest River Commission
 to oversee, plan and select best management plans affecting water quality and quantity in
 the Pend Oreille/Priest River Basin; and authorized the commission to work with various
 state and federal agencies to study, investigate, develop and select strategies for the
 preservation of the native fish, scenic beauty, health, recreation, transportation and
 commercial purposes necessary and desirable for all the inhabitants of the state. (HB 110)
- Made the sheriff of each county the official responsible for the command of all search and
 rescue operations within that county, with the exception of those under the authority of the
 Idaho Transportation Department as coordinated with the Division of Aeronautics,
 operations conducted within the incorporated limits of any city, or operations involving
 trapped or injured persons whose location is within that of a fire district in charge of such
 rescues. (HB 113)

- Clarified that liability for search and rescue operation costs does not extend to persons who
 are authorized by private property owners to be on the private property, to government
 officials who enter the private property as part of their official duty, nor persons assisting in a
 search or rescue effort authorized by a government official. (HB 116)
- Authorized the Division of Animal Industries to regulate and prohibit, in cooperation with the Department of Fish and Game, certain private feeding of big game animals to protect against disease transmission. (HB 127)
- Required that all potatoes offered for sale, sold or delivered under contract into or within the state of Idaho for planting in the state be accompanied by a plant health certificate indicating the generational history of the seed and the results of the growing season inspections relating to pests and disease. (HB 129)
- Required the Department of Environmental Quality to utilize the best available peer reviewed science and supporting studies when proposing rules more stringent or broader in scope than federal rules, and required that certain specific information be included in the rulemaking record when proposing a standard deemed necessary to protect human health and the environment. (HB 150)
- Authorized ground water district boards to vote on behalf of their members in water district
 meetings to allow for a more efficient and orderly manner of voting. However, each
 individual ground water district member may vote his own water rights at a meeting if they
 provide written notice prior to the meeting or attend the meeting. (HB 208)
- Provided that rules of the Department of Environmental Quality relating to opacity standards shall not apply to crop residue burning. (HB 228)
- Clarified that landowners who grant public access through conservation easements are held harmless from liability claims made by those who recreate on the land. (HB 273)
- Required that county boards of commissioners enact ordinances and resolutions regulating
 the siting of confined animal feeding operations, and required that at least one public
 meeting be held wherein citizens whose primary residence is within one mile, or such
 greater distance as determined by the county board of commissioners, of the proposed site
 may provide input to be considered in the county's siting decisions. (HB 283)
- Clarified the scope of the "local public interest" review in water right applications, transfers
 and water supply bank transactions and revised criteria to be considered by the director of
 the Department of Water Resources associated with the determination of applications for
 appropriation of water, change in point of diversion, place of use, period of use or nature of
 use of water under established rights, certain exchanges of water and proposed rentals of
 water from the water supply bank. (HB 284)
- Authorized the Governor's Office of Species Conservation, with assistance of the Department of Fish and Game, to coordinate an orderly transition from federal management of gray wolves to state management under the Idaho Wolf Conservation Management Plan, including participation in activities regarding nuisance wolves, discussion of wolf recovery programs, and cooperation with state and federal entities and federally recognized Indian Tribes regarding wolf conflicts in Idaho. (HB 294)

- Provided that bonds, certificates of deposit and letters of credit be calculated based on indebtedness paid and owed to producers, removed minimum bond requirements and allowed for one bond to cover the commodity dealer law, the bonded warehouse law and the seed indemnity fund law. (HB 307, 308 and 309)
- Extended designated requirements for crop residue burning to all 10 northern counties, transferred the operation and enforcement of the law from the Department of Environmental Quality to the Department of Agriculture, provided for investigations by the department and imposition of civil penalties against violators and created a safe harbor provision for growers who are in compliance with the law and the rules. (HB 391)
- Authorized the Department of Environmental Quality to voluntarily enter into agreements to implement multi-year environmental compliance schedules in situations where the person or organization is already in compliance with applicable federal and state environmental laws and rules but desires to take additional actions to improve environmental quality. (HB 394)
- Established an adoption process for total maximum daily loads (TMDLs) by the director of the Department of Environmental Quality, clarified that TMDLs serve as a plan to assist in attaining compliance with water quality standards, provided for public comments, meetings and appeals, and clarified that TMDLs are not subject to rulemaking requirements. (HB 458)

Commercial Transactions

- Regulated payday loan practices in Idaho through licensing and oversight by the Department of Finance. Restricted forms of collateral and certain collection practices, ensured that borrowers may rescind a loan from a payday loan establishment within a certain time frame and required that payday loan establishments disclose specific information to borrowers relating to particulars of the loan. (HB 206)
- Provided additional protections against identity theft by limiting the amount of information that is allowed to be printed on credit card transaction receipts. Merchants may not print on the receipt provided to the cardholder more than the last five digits of the customer's credit card account number or the expiration date of the credit card. (HB 134)
- Established procedures by which a contractor who receives notice of a construction defect claim is given the opportunity to repair the defects before a lawsuit is filed, and provided for the drafting of agreements to cure defects and the ability of the plaintiff to bring a legal action if the provisions of the agreement are not fulfilled. (HB 133)
- Provided requirements for tobacco product sales over the phone or Internet, including age verification, taxation disclosure, business registration and reporting requirements. (HB 357)
- Required life insurance companies to pay interest on death benefits if payment is not made to a beneficiary within 30 days of proof of death. (HB 175)

Courts

 Reformed tort liability by repealing exceptions for environmental damages and damages associated with medical devices and pharmaceutical products, reducing the cap on noneconomic damages to \$250,000, imposing limits on punitive damages and enabling

defendants to appeal large awards for punitive damages by posting a bond for compensatory damages and the first \$1 million of punitive damages. (HB 92)

- Revised the surcharge on the sale of liquor through the State Liquor Dispensary from 15% to 2%, with proceeds to go to a dedicated fund for Drug Courts and Family Court Services in Idaho. (HB 369)
- Allowed district courts to accept payments made by credit card or debit card. (HB 337)
- Applied licensing, bonding and other regulatory oversight requirements to bail agents in Idaho. (HB 62)

Criminal Justice & Corrections

- Revised the definition of rape and clarified the types of situations in which a female subjected to the act of rape will be considered "unconscious of the nature of the act." (HB 169)
- Provided immunity to broadcasters airing information supplied by state law enforcement officials related to "Amber Alerts" for the purpose of finding abducted children. (HB 247)
- Required sheriffs to publish the name, address and photograph of violent sexual predators once a week for three weeks and authorized a \$50 charge to be paid by sex offenders to offset the cost of the publication. (HB 3)
- Increased the maximum prison sentence for the crime of incest from 10 to 25 years. (HB 123)
- Exempted from the death penalty persons determined to be "mentally retarded" by a judge and set forth a mandatory minimum of life imprisonment for mentally retarded persons in first-degree murder cases if a jury unanimously finds the existence of a statutory aggravating factor. (HB 171)
- Made it a felony for adults to knowingly use the Internet to solicit a minor child under the age
 of 16 to engage in any sexual act, with conviction punishable by imprisonment in the state
 prison for a maximum of 15 years. (HB 266)
- Required a jury to determine whether the death penalty should be imposed in first-degree murder cases and set forth a new mandatory minimum of life imprisonment in first-degree murder cases if a statutory aggravating factor is found. (SB 1001)
- Prohibited persons convicted of murder or voluntary manslaughter from shipping, transporting, possessing or receiving firearms if the conviction was the result of an offense committed by the use of a firearm. (SB 1160)
- Made it more difficult to obtain date rape drugs by expanding the description of gamma hydroxybutyric acid, moving the substance buprenorphine to the controlled substance schedule and adding any drug product containing gamma hydroxybutyric acid under the penalty provisions for persons being under the influence of controlled substances and being on a public roadway or conveyance. (HB 237)

Education, Higher

- Changed the name of the "Idaho Promise Scholarship Program" to the "Idaho Robert R. Lee Promise Scholarship Program" in honor of the late Senator Lee, sponsor of the original legislation. (SB 1134)
- Created a civil relief act to protect the educational status of members of the Idaho National Guard if they are ordered to active duty for more than 30 days. (SB 1137)
- Created a rural physician incentive program and provided for payments for educational debts from an incentive fund financed with moneys from a surcharge on state support grants for medical education programs in an effort to encourage physicians to locate in rural areas of Idaho. (HB 301)
- Revised the definitions of "account owner" and "member of the family" to bring the Idaho College Savings Program into compliance with the Federal Economic Growth and Tax Relief Reconciliation Act of 2001. (HB 68)
- Excluded as taxable income on the state tax return that portion of a nonqualified withdrawal from the Idaho College Savings Program that has already been included in federal taxable income. (HB 69)

Education, Public Schools

- Clarified that expenditures made to abate unsafe or unhealthy conditions in public school facilities by repair, renovation or replacement are and have been ordinary and necessary expenses within the meaning of Section 3, Article VIII, of the Constitution of the State of Idaho. (HB 326)
- Allowed local courts to approve an "educational necessity levy" to raise revenues to fix unsafe or unhealthy conditions in Idaho school buildings, and required that suits be files in the district courts, and not against the state. (HB 403)
- Established and required school districts and educational agencies to participate in the Idaho Student Information Management System — a secure, centralized data system where public school information is stored, accessed and analyzed — with ongoing costs to be provided annually in the public school appropriation. (HB 367)
- Provided a district fee structure and clarified tuition payment requirements for the Idaho Digital Learning Academy. (SB 1170)
- Exempted the prohibition on distribution or sale of mailing or telephone number lists to allow student directory information to be released to military recruiters for recruiting, pursuant to the federal requirements. (SB 1175)
- Provided immunity from defamation for individuals who report threats of school violence to appropriate authorities. (HB 269)
- Revised the procedure used by the Department of Education to calculate and send bond levy equalization payments to school districts and required districts to report more specific information to the department to facilitate the procedure. (HB 319)

Government

- Brought Idaho law into conformance with the federal Help America Vote Act of 2002.
 Defined the role of the Secretary of State in administering federal elections, provided for a statewide registered voter list, required rules or directives to outline election grievance procedures and define what constitutes a "valid vote." (HB 162)
- Amended voting law relating to initiative and referendum measures to require that election ballots include a "clear and concise" statement regarding the effect of a "yes" or "no" vote. (HB 291)
- Required persons who make independent expenditures of \$1,000 or more for any primary or general election to file a written statement with the Secretary of State detailing the expenditures. (SB 1009)
- Allowed state and local governments to enter into written contracts with collection agencies for the collection of public debts, including ambulance service fees, civil fines and other fees charged by state and local governments. (SB 1108)
- Extended certain provisions of the Idaho Drug-Free Workplace Act to enable public employers who comply with drug testing requirements, within constitutional limitations, to qualify for a reduction in employer premiums for purposes of worker's compensation insurance. (SB 1119)
- Provided a bonus of up to \$1,000 for state employees who submit suggestions or recommendations that result in taxpayer savings in excess of the amount of the bonus. (SB 1130)
- Imposed the same requirements currently imposed by state law on land line telephone companies to wireless carriers pertaining to a local option fee of no more than \$1 per month for 911 emergency communication services, required additional auditing and reporting by 911, and required that a joint task force of public safety providers, governments and telecommunications carriers study the Emergency Communications Act regarding governance and statewide application and report to the legislature in 2004. (HB 363)
- Provided for utilization of the emergency communications fee by a 911 service area and for reimbursement to telecommunications providers. (SB 1178)
- Established a consistent review process to better enable governments to evaluate whether
 proposed actions may result in a taking of private property without due process. A takings
 analysis is only triggered after a written request is filed following a final action being taken by
 the governmental entity. (HB 256)
- Extended from two to five years the time during which the State Board of Land Commissioners can use Land Bank funds to purchase other land within the state to provide the board with the needed flexibility to adequately achieve its mandate of maximizing returns to endowment beneficiaries. (HB 305)
- Added endowment land parcels for lease to Tamarack Resort near Cascade to the property available for long-term lease by the State Board of Land Commissioners. (HB 83)

- Authorized the State Treasurer to issue commemorative silver medallions to honor Idaho history, people or resources, with the first medallion to honor Idaho's military heroes, and with sale proceeds to be credited to the State Veterans Cemetery Maintenance Fund. (HB 415)
- Required labor organizations that engage in political activities to keep a segregated fund for
 political contributions, specified that contributions to the fund be on a voluntary basis and
 made directly by the donor, and prohibited payroll withholding of funds to be used for
 political purposes. (HB 329)
- Reaffirmed the authority of labor organizations to engage in lobbying and voter registration activities as regular membership activities. (SB 1176)

Governments, Local

- Required city councils to establish and maintain adequate and reasonable systems of internal accounting controls, and required that all claims against a city be approved by the city council prior to payment. (SB 1071)
- Provided that cities may adopt ordinances to permit the sale of liquor by the drink and to extend the permissible hours of sale for liquor by the drink. (HB 333)
- Provided that planning and zoning actions taken by local governments may be subject to a
 regulatory takings analysis; revised notice requirements so that landowners within a
 specified distance of a proposed action receive notice; provided that an interim ordinance or
 moratorium may be in effect for not more than one calendar year, and that every final
 decision concerning a site-specific land use request may be subject to a regulatory takings
 analysis. (HB 257)
- Provided that a county representative can initiate civil action, extend the collection window from six months to one year, allow public debt collection fees to be in addition to the amount owing and set provisions for charging fees for collection. (SB 1108)
- Provided that those who are buying and selling transferable development rights have the
 discretion as to whether the right will be transferred permanently or only for a fixed period of
 time, stated in a written contract that must be recorded with the county recorder. (HB 321)
- Allowed counties to determine whether dessert wines, meaning those wines containing less than 21% alcohol by volume, may be sold in private retail outlets within the county. The law would require the affirmative approval of county commissioners, or the electorate of a county, before sales of dessert wines could occur. (HB 246)
- Gave the Idaho Bond Bank Authority the power and duty to facilitate the purchase of notes
 from municipalities to be utilized by a municipality in purchasing, leasing or leasepurchasing tangible personal property when the note was otherwise legally issued and
 authorized by a municipality and the purchase of the note from a municipality does not
 violate the state constitution. (HB 267)
- Allowed counties that wish to do so to return certain severed mineral rights to the land from which they originated. (HB 223)

• Restricted Idaho cities from making decisions outside of the city boundary when dealing with urban renewal districts. (HB 276)

Health / Welfare

- Increased health insurance options for children eligible for the Children's Health Insurance Program (CHIP) and low-income adults employed by small businesses by creating the new Health Insurance Access Card program to provide premium assistance to enable families to purchase commercial insurance, provided additional benefits for children who fall within 150% to 185% of federal poverty through an expanded CHIP program, and created a pilot program for low-income adults employed by small businesses. (HB 376)
- Prohibited exclusion from health insurance benefits of such recreational activities as skiing, snowboarding, off-highway vehicle riding, horseback riding, motorcycling, snowmobiling or similar activities. (SB 1051)
- Made hospital peer reviews more effective by encouraging physician participation through limiting disclosure of comments designed to improve medical practice standards. (SB 1102)
- Allowed the issuance of limited permits to polysomnographers to continue to perform their limited scope of duties in the field of respiratory therapy without becoming fully licensed as respiratory therapists, established qualifications for permits, including educational requirements, and placed polysomnographers under the direction of the Respiratory Therapy Licensure Board. (SB 1165)
- Clarified that all entities providing health insurance in Idaho are subject to the reporting requirements relating to annual assessments levied by the Small Employer Reinsurance Program and the Individual High Risk Reinsurance Pool. (HB 306)
- Prohibited discrimination in child protection legal proceedings against parents because of a
 disability and provided that the factors to be considered in child protection cases include
 abuse, neglect and abandonment regardless of whether the parent has a disability. (HB
 167)
- Provided that military service of an active member of the Idaho National Guard ordered or called to duty shall not be a substantial or material and permanent change in circumstance in order to modify decreed child custody and visitation privileges. (SB 1136)
- Allowed a credit to be given against an accrued child support obligation in the limited circumstance that the parent who is obligated to pay child support has physical custody of the child with the knowledge and consent of the custodial parent and provided that this limited change in support requirements does not modify, alter or set aside the terms of the decree. (SB 1115)
- Called upon Congress to appropriate the funds to allow timely access to health care for veterans. (HJM 11)

Taxation

• Increased the sales and use tax from 5% to 6% for the period May 1, 2003, through June 30, 2005. (HB 400)

- Increased the cigarette tax by \$.29 to a rate of \$.57 per package of 20 for the period June 1, 2003, through June 30, 2005. Revised distribution of moneys collected from the cigarette tax as follows: for fiscal year 2004, \$23.5 million collected from the increase will go to the General Fund and all remaining moneys to the Economic Recovery Reserve Fund. For fiscal year 2005, all moneys collected from the increase will be distributed to the Economic Recovery Reserve Fund. (HB 264)
- Authorized counties to adopt, implement and collect local-option sales taxes. Required that
 the measure: 1) be put to the voters and obtain a minimum of 66 2/3% approval; 2) be used
 for the specific purpose of debt retirement of detention facilities; 3) be set for a period of time
 10 years or less; and 4) set forth the rate of taxation and that the rate is not to exceed .5%.
 Not less than 50% of the revenue generated would be applied to reduce existing property
 taxes, with the balance used to provide needed services otherwise paid for by General Fund
 revenues. The measure sunsets on December 31, 2009. (HB 428)
- Provided an exemption to the increased 1% sales tax for certain contracts entered into agreement prior to April 15, 2003, in which tangible personal property was incorporated into real property. (HB 452)
- Allowed taxpayers who make new personal property investments in Idaho on and after January 1, 2003, to forego the income tax investment tax credit by electing an exemption from personal property tax for a period of two years. (HB 453)
- Included the use of property by any person as a residence under the definition of "occupied" for occupancy tax purposes, including occupancy of improvements or use in storage of vehicles, boats or household goods, provided such use is not solely related to construction or sale of the property. (HB 454)
- Deleted the \$2 credit allowed for electronic filing of tax returns with the State Tax Commission. (HB 130)
- Updated references to the Internal Revenue Code to conform Idaho income tax to IRS changes made after January 1, 2002; to disallow the special allowance for 30% first-year "bonus depreciation" permitted by subsection (k) of section 168 of the Internal Revenue Code; and to disallow the deduction of certain expenses of elementary and secondary school teachers. (HB 390)
- Clarified that the state income tax credit for investment in broadband equipment is transferable only by the taxpayer who earned the credit and that the incentive investment state income tax credit is transferable only by the taxpayer who earned the credit. (HB 225)
- Identified the standard to be applied and the burden of proof requirement in appeals of
 property tax assessments from one that requires proof that an assessment is manifestly
 excessive, arbitrary and capricious, or fraudulent and oppressive, to one that requires simply
 that the assessment is erroneous. (HB 302)
- Exempted property used for charter school purposes from property taxation. (HB 255)
- Changed the date by which county auditors must certify the new construction roll to the State Tax Commission from the first Monday of June to the fourth Monday of July; revised a reference to the Farmers Home Administration to the Consolidated Farm Service Agency to

reflect a change in federal law; deleted obsolete language relating to taxation of merchandise held for sale from the code section relating to the property tax exemption for property of fraternal, benevolent, or charitable corporations or societies; and permitted additional time for school districts to certify a budget for a school emergency fund levy. (HB 75)

Transportation

- Established an Idaho Motorcycle Safety Program license plate program to generate funds for the Idaho Motorcycle Safety Training Program administered by the Department of Education. (SB 1011)
- Established a special Boy Scout license plate program with revenues going to the Boy Scout Council in the county where the plates were sold. (SB 1052)
- Established the Idaho white water rafting special license plate program with revenues being used for the general education and promotion of Idaho's white water rivers and the rafting and kayaking industries. (SB 1082)
- Allowed licensed drivers who are 15 years old to drive during nondaylight hours if they are accompanied by an adult licensed driver and if the two are the only occupants of the front passenger section of the vehicle. (HB 103)
- Increased the availability of designated accessible parking places for disabled individuals who are qualified to use them. (SB 1078)
- Changed safety restraint law to increase the fine from \$5 to \$10, with increased revenues being deposited in the state's Catastrophic Health Care Fund; allowed any occupant in a car 18 years or older who is not properly restrained to be issued a citation; and allowed for citation of drivers at least 18 years old if any occupant under 18 is not properly restrained. (HB 303)
- Prohibited the use of studded tires between May 1 and September 30, and established new weight and protrusion standards for studs in tires beginning July 1, 2005. (HB 231)
- Established a 10-year pilot project on specified Idaho state highways for the use of specially configured trucks to carry loads up to 129,000 pounds by permit to test if the total number of truck trips can be substantially reduced. (HB 395)
- Allowed a longer overall bumper-to-bumper length up to 115 feet for commercial vehicle configurations such as triples and turnpike doubles to operate on routes they are currently operating on by permit at 105 feet, but did not increase the allowable length of the cargocarrying units. (SB 1053)
- Required a planning and zoning commission's review of a permit application for a new public school facility to look carefully at the effects of vehicular, bicycle and pedestrian traffic on adjacent roads and highways, and the review of reports of nearby highway jurisdictions on whether the highway systems can satisfactorily accommodate the proposed school project. (HB 229)

Bills Vetoed by the Governor

- **HB 332** Appropriated \$3,485,800 to the Office of the Governor for the Commission for the Blind and Visually Impaired for fiscal year 2004 and limited the number of full-time equivalent positions to 39.50.
- HB 344 Appropriated \$17,191,800 to the State Board of Education for the Division of Vocational Rehabilitation for fiscal year 2004, limited the number of full-time equivalent positions to 150 and expressed legislative intent regarding the sharing of resources.
- **HB 397** Prohibited issuance of any additional bonded indebtedness from the Permanent Building Fund beyond that authorized by the Legislature prior to June 30, 2003.
- **SB 1143** Provided legislative intent regarding reduced state revenues and reduced FY 2003 appropriations to state agencies by 5%, except Department of Correction 4%, Higher Education 3%, Department of Health and Welfare 2% and Public Education 1%.
- **SB 1144** Appropriated \$11,203,300 to the Office of the Governor for the Commission on Aging for fiscal year 2004 and limited the number of full-time equivalent positions to 15.
- **SB 1151** Appropriated \$19,812,200 to the Department of Water Resources for fiscal year 2004, limited the number of full-time equivalent positions to 175 and provided for a transfer of moneys to the Water Resources Adjudication Fund.
- **SB 1154** Appropriated \$25,570,200 to the Department of Agriculture for fiscal year 2004 and limited the number of full-time equivalent positions to 181.60.
- **SB 1159** Appropriated \$423,872,400 to the Idaho Transportation Department for fiscal year 2004 and limited the number of full-time equivalent positions to 1,838.

Legislative Council Interim Study Committees

Three two-year interim committees were authorized during the 2003 legislative session:

- **HB 9** Energy Related Issues
- SCR 103 Natural Resources
- SCR 116 Judicial Elections